

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #1	CCRB Case #: 201806412	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/20/2018 11:24 PM, Wednesday, 07/25/2018	Location of Incident: § 87(2)(b)	Precinct: 50	18 Mo. SOL 1/20/2020	EO SOL 1/20/2020	
Date/Time CV Reported Wed, 07/25/2018 7:58 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/07/2018 11:09 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			050 PCT
2. LT James Hynes	00000	922530	050 PCT
3. SGT Noel Gutierrez	05149	934980	WARRSEC
4. DT3 Timothy Smith	1673	934353	WARRSEC
5. DT3 Christian Allen	661	945467	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Wolvers	28598	946399	050 PCT
2. POM Roland Benson	12358	932322	050 PCT
3. POM Julian Jackson	25790	945843	050 PCT
4. POF Tiffany Buccheri	09737	964946	050 PCT
5. POM Jerry Gonzalez	23017	925369	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: On July 20, 2018, an officer threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.LT James Hynes	Discourtesy: On July 20, 2018, Lieutenant James Hynes spoke discourteously to § 87(2)(b)	§ 87(2)(b)
C.LT James Hynes	Abuse: On July 20, 2018, Lieutenant James Hynes threatened to arrest § 87(2)(b)	§ 87(2)(b)
D.DT3 Christian Allen	Abuse: On July 25, 2018, Detective Christian Allen damaged § 87(2)(b)'s property.	§ 87(2)(b)
E.SGT Noel Gutierrez	Abuse: On July 25, 2018, Sergeant Noel Gutierrez stopped § 87(2)(b)	§ 87(2)(b)
F.DT3 Timothy Smith	Abuse: On July 25, 2018, Detective Timothy Smith stopped § 87(2)(b)	§ 87(2)(b)
G.DT3 Christian Allen	Abuse: On July 25, 2018, Detective Christian Allen stopped § 87(2)(b)	§ 87(2)(b)

Case Summary

On July 25, 2018, § 87(2)(b) called the IAB Command Center and filed this complaint. Log #2018-29830 was generated and was received at the CCRB on August 7, 2018.

On July 20, 2018, at approximately 11:24pm, Lieutenant James Hynes, PO Brian Wolvers, PO Roland Benson, PO Julian Jackson, PO Tiffany Buccheri, and PO Jerry Gonzalez—all from the 50th Precinct—responded to a 911 call regarding a dispute between § 87(2)(b) and § 87(2)(b) s son's ex-girlfriend, § 87(2)(b) outside of § 87(2)(b) in the Bronx. § 87(2)(b) s son, § 87(2)(b), was not present. While standing in a group, an unidentified officer allegedly stated to § 87(2)(b) “we can lock you up” (**Allegation A-Abuse of Authority:** § 87(2)(g)). § 87(2)(b) s tenant, § 87(2)(b) was on scene and informed Lt. Hynes that § 87(2)(b) had been assaulted. Lt. Hynes allegedly told § 87(2)(b) “Shut the fuck up,” and that he would arrest him (**Allegations B and C- Discourtesy and Abuse of Authority:** § 87(2)(g)). Officers later left the location after filing out a Complaint Report and Domestic Incident Report with § 87(2)(b) s son, § 87(2)(b), as the alleged perpetrator.

On July 25, 2018, at approximately 8:53am Sergeant Noel Gutierrez, Detective Christian Allen, and Detective Timothy Smith, all of Bronx Warrant Squad, arrived at § 87(2)(b) to apprehend § 87(2)(b). While inside the building lobby, Det. Allen allegedly damaged the door of a vacant apartment with a crowbar (**Allegation D-Abuse of Authority:** § 87(2)(g)). Sgt. Gutierrez, Det. Allen, and Det. Smith then allegedly stopped § 87(2)(b) (**Allegations E, F, and G-Abuse of Authority:** § 87(2)(g)). The officers left without apprehending § 87(2)(b).

Video footage clips from § 87(2)(b) s home security video system were provided to the investigation (Board Review 1-8).

Findings and Recommendations

Allegation (A) Abuse of Authority: On July 20, 2018, an officer threatened to arrest § 87(2)(b).

Allegation (B) Discourtesy: On July 20, 2018, Lieutenant James Hynes spoke discourteously to § 87(2)(b).

Allegation (C) Abuse of Authority: On July 20, 2018, Lieutenant James Hynes threatened to arrest § 87(2)(b).

§ 87(2)(b) alleged that an unidentified officer threatened to arrest her. She also alleged that later, Lt. Hynes said “shut the fuck up before I lock all of you the hell up,” to § 87(2)(b).

§ 87(2)(b) did not know which officer allegedly threatened to arrest her. Therefore, Allegation A is being pled against “an officer.”

§ 87(2)(b) testified that, when she arrived home at § 87(2)(b) in the Bronx, she got into a dispute with her son's ex-girlfriend, § 87(2)(b) called 911 and officers responded. § 87(2)(b) attempted to explain what happened to Lt. Hynes but he said he was not speaking to her. Lt. Hynes then stood in a group with PO Buccheri, PO Jackson, and an unidentified officer. While they were standing in the group, an officer stated to § 87(2)(b) “We can lock you up.” § 87(2)(b) told Lt. Hynes that she wanted to go home. Lt. Hynes told her that she could not

yet. § 87(2)(b) then told Lt. Hynes that § 87(2)(b) had just been assaulted. Lt. Hynes then stated to § 87(2)(b) “shut the fuck up,” and threatened to arrest him (Board Review 09).

On August 14, 2018, § 87(2)(b) provided an unverified telephone statement to the investigation. At the end, § 87(2)(b) stated that he did not wish to participate in this investigation and thus did not provide a sworn statement. During his brief narrative, § 87(2)(b) stated that when he got outside, § 87(2)(b) was yelling at officers and other civilians. § 87(2)(b) stood next to § 87(2)(b) and began speaking to her. Lt. Hynes then told him “shut the hell up. Don’t talk or you’re going to be arrested. Shut your fucking mouth.” (Board Review 10)

Lt. Hynes testified that when he arrived on scene, he observed § 87(2)(b) speaking with one set of officers and the complainant, identified by the investigation as § 87(2)(b) speaking with another set of officers. Lt. Hynes allowed this to continue. Approximately five to seven feet from § 87(2)(b) were two males. After Lt. Hynes had been on scene for approximately ten minutes, one of the males began yelling at the complainant stating, “what the fuck are you looking at? Don’t fucking look at me.” Lt. Hynes asked the male why he was screaming and told him that the female could look wherever she wanted. The other male told the screaming male to relax. Lt. Hynes denied saying, “shut the fuck up,” or threatening to arrest § 87(2)(b). He denied using any profanity or threatening to arrest anyone. Lt. Hynes denied observing § 87(2)(b) to be in violation of anything that could have justified arresting her (Board Review 11).

None of the other officers on scene testified that Lt. Hynes made that statement, used profanity, or threatened to arrest anyone (Board Review 12-16).

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: On July 25, 2018, Detective Christian Allen damaged § 87(2)(b)s property.

Allegation (E) Abuse of Authority: On July 25, 2018, Sergeant Noel Gutierrez stopped § 87(2)(b)

Allegation (F) Abuse of Authority: On July 25, 2018, Detective Timothy Smith stopped § 87(2)(b)

Allegation (G) Abuse of Authority: On July 25, 2018, Detective Christian Allen stopped § 87(2)(b)

§ 87(2)(b) alleged that, via her security video system, she observed Det. Allen damage the front door of a vacant apartment inside of § 87(2)(b). § 87(2)(b) alleged that Det. Smith, Det. Allen, and Det. Gutierrez her outside of the building.

§ 87(2)(b) testified that on July 25, 2018, she was inside of § 87(2)(b) in the Bronx when she saw Det. Allen, Det. Smith, and Sgt. Gutierrez outside of her building. She saw them via her security video system. § 87(2)(b) observed the officers enter the lobby of the building then knock on a vacant apartment door. § 87(2)(b) testified that the apartment was vacant. Det. Allen then touched a crowbar to the door. This caused the doorframe to be bent and paint to chip off. They did not open the door. Later, on the side of the house, § 87(2)(b) observed the officers speak to § 87(2)(b) for approximately 15 minutes before they walked away. There is no audio on her security video system and thus she did not know what was said. After her sworn statement, § 87(2)(b) provided the investigator with a photograph of the damaged apartment door. She described the damage as being the missing paint and slight indent. § 87(2)(b) testified that she owns the building (Board Review 09).

§ 87(2)(b) testified that on July 25, 2018, § 87(2)(b) called her and informed her that police officers were outside her building. § 87(2)(b) left her home and came to § 87(2)(b) in the Bronx. As she was walking towards the side door of the building, she heard footsteps behind her and turned around. Det. Allen asked § 87(2)(b) if she knew who § 87(2)(b) was and she said she did. § 87(2)(b) asked Det. Allen what they were there for and he told her that they wanted to speak to § 87(2)(b). § 87(2)(b) stood in place because she felt that if she had continued into the building, the officers would have followed her. While she was standing there, the officers were positioned in such a way that blocked her from walking back towards the street. Det. Allen continued to speak to her but § 87(2)(b) stopped listening and no longer responded to anything he said. After approximately 10-15 minutes, § 87(2)(b) decided to walk away. She did not say anything before doing so. § 87(2)(b) walked back towards the sidewalk and the officers followed her. § 87(2)(b) turned and walked to the corner. The officers stopped following her. § 87(2)(b) testified that the officers never told her to stop or that she had to speak to them. She felt like she did because of their physical positioning while Det. Allen was speaking to her (Board Review 17).



Crowbar.mp4

The above video depicts Det. Allen standing near the door of § 87(2)(b). Det. Allen does not appear to be holding a crow bar, nor can he be seen making any contact with the door (Board Review 01).

VIDEO LINK

The above video depicts the entirety of the officers' interaction with § 87(2)(b). Det. Allen approaches § 87(2)(b) from behind and appears to briefly speak to her before she makes a phone call. Sgt. Gutierrez and Det. Smith approached behind Det. Allen. The officers stand to § 87(2)(b)'s left. Neither Sgt. Gutierrez nor Det. Smith engage with her. At 3:14, § 87(2)(b) walks away from the officers while on the phone. The officers remain where they are. At 4:40, § 87(2)(b) reenters the view, then walks past the officers. The officers walk behind her but enter their van as she turns to the right (Board Review 05).

Det. Allen testified that he, Det. Smith, and Sgt. Gutierrez travelled to § 87(2)(b) in the Bronx to apprehend § 87(2)(b) in regards to an active I-Card. He described the location as a large house with multiple apartments. Det. Allen denied that they had a crowbar, or any other

tools, with them. He denied using a crowbar on any doors or causing damage to any doors. Det. Allen was presented with the footage embedded above of him seemingly knocking on a door. He testified that he was not sure what he was doing but that he was not using a crowbar nor holding one at this point. Det. Allen testified that as they approached an entrance to the building, he observed § 87(2)(b) walking towards the door. He, Det. Smith, and Sgt. Gutierrez approached § 87(2)(b) from behind to find out if she knew § 87(2)(b). Det. Allen identified himself as a police officer and asked § 87(2)(b) a question regarding § 87(2)(b). Det. Allen could not recall what he asked § 87(2)(b). § 87(2)(b) immediately became irate and began cursing at the officers. The officers stood there briefly while she continued to yell at them. Det. Allen could not recall if they walked away or if § 87(2)(b) did. Det. Allen testified that she was free to walk away at any point and that she was not stopped and was never told such (Board Review 18).

Sgt. Gutierrez's and Det. Smith's § 87(2)(g) both denied that any officer used a crow bar or that they had one with them. Both officers testified that they were present when Det. Allen spoke to § 87(2)(b) but neither could recall what was said. Both described her as uncooperative. Both testified that § 87(2)(b) was never stopped and was free to leave at any point (Board Review 19, 20).

A request for information is an encounter between a civilian and an officer conducted for the purpose of requesting information from the civilian. During such an interaction, a civilian is free to leave. The objective is to gather information and not to focus on the person as a potential suspect. The officer may not create a situation, either by words or by actions, where a reasonable person would not feel free to leave. NYPD Patrol Guide 212-11 (Board Review 21).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(g) have been a party (Board Review 24).
- Lieutenant Hynes has been a member-of-service for 20 years and has been a subject in three CCRB complaints and four allegations, of which one was substantiated:
 - Case 200510359 involved a substantiated allegation of threat to damage or seize property against Lt. Hynes. The Board recommended instructions and the NYPD imposed instructions.
 - § 87(2)(g)
- Det. Allen has been a member-of-service for 11 years and has been a subject in three CCRB complaints and six allegations, of which one was substantiated:
 - Case 201606686 involved a substantiated allegation of stop. The Board recommended command discipline B and the NYPD imposed formalized training.
 - § 87(2)(g)
- Sgt. Gutierrez has been a member-of-service for 14 years and has been a subject in three CCRB complaints and seven allegations, of which two were substantiated:
 - Case 201509083 involved substantiated allegations of refusal to provide name and shield number and stop. The Board recommended command discipline B and the NYPD imposed command discipline A.
 - § 87(2)(g)
- Det. Smith has been a member-of-service for 14 years and has been a subject in five CCRB complaints and 13 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate.
- As of December 12, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 22).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 1

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____
Signature Print Title & Name Date